IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8499 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PAPPU @ ASRAF GULAM MOHD. RANGUNI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8499 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/03/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 24-7-2002, by which he is detained as a "dangerous person" under the Prevention of Antisocial Activities Act, (for short "the PASA" Act). Along with the order of detention he is also served with the ground of detention of the same date. In the said grounds, the activities of the petitioner are

highlighted. The authority, after having been satisfied about the activities of the petitioner, has ultimately detained him as a dangerous person by way of preventive detention. There is also a mention about two criminal cases, which are registered against the petitioner. The petitioner has challenged the aforesaid order on various grounds.

2) The learned advocate for the petitioner submitted that the last registered case against the petitioner is of 2nd March, 2002, and as against that, the detention order is passed as late as on 24th July, 2002. It is submitted that there is a delay of more than four and a half months in passing the detention order, from the last incident. In this behalf, reference is made to the decision of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City & Others reported in 1997 (1) G.L.H. 381 wherein this Court has observed in Para 21 as under:-

> "21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appeared to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993(2) Suppli. SCC 61."

3) If really the authority wanted to detain the petitioner, it was not necessary to wait for such a long time. When the petitioner was already arrested in connection with the case dated 2nd March, 2002 and he was in judicial custody on 6th March, 2002 he should not have

been detained, of course, the petitioner was released on bail within a very short time on 11th March, 2002. Under such circumstances, the order of detention, on the ground of delay in passing the detention order from the last date of incident, is required to be quashed and set aside.

4) In view of the above, the petition is allowed. The order of detention is set aside. The detenu, Pappu Asraf Gulam Mohd.Ranguni is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar, J.)

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